

HON. RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

R.H., by and through his parents and  
guardians, P.H. and N.B.-H., individually, on  
behalf of WASHINGTON ALLIANCE FOR  
HEALTHCARE INSURANCE TRUST  
HEALTH BENEFIT PLAN, and on behalf of  
similarly situated individuals and plans,

Plaintiff,

v.

PREMERA BLUE CROSS, LIFEWISE  
HEALTH PLAN OF WASHINGTON

Defendants.

NO. 2:13-cv-00097-RAJ

~~[REVISED PROPOSED]~~ ORDER:

- (1) GRANTING FINAL APPROVAL  
OF SETTLEMENT AGREEMENT;
- (2) APPROVING DISBURSEMENTS  
PURSUANT TO SETTLEMENT  
AGREEMENT;
- (3) APPROVING OPT-OUTS;
- (4) AUTHORIZING THE PAYMENT  
OF LATE CLAIMS; AND
- (5) SCHEDULING A *CY PRES*  
HEARING

ORDER GRANTING FINAL APPROVAL  
OF SETTLEMENT AGREEMENT, ETC.

[Case No. 2:13-cv-00097-RAJ]

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1           Upon consideration of the Plaintiff's Motions for Final Approval, Attorney Fees,  
2 Costs and Inventive Awards, it is hereby ORDERED as follows:

3           (1)     With respect to the two classes involved in this action, the R.H. NDT  
4 Settlement Class and the R.H. ABA Settlement Class (collectively "R.H. Classes"), the  
5 Court approves the Settlement Agreement attached as *Appendix 1* to the Motion for  
6 Preliminary Approval as fair, reasonable and adequate to the class pursuant to FRCP  
7 23.

8           (2)     The Court finds that the settlement notice to the R.H. Classes met the  
9 requirements of Federal Civil Rule of Civil Procedure 23, due process and the  
10 applicable law in that it fairly and adequately described the terms of the Agreement,  
11 gave notice of the time and place of the hearing for final approval of the Agreement,  
12 and described how a class member may comment on, opt out of, object to, or support  
13 the Agreement. The Court finds that the direct mail notice process provided to the  
14 R.H. Classes was the best notice practicable under the circumstances, and met the  
15 requirements of FRCP 23 and due process.

16           (3)     Upon the occurrence of the conditions set forth in Section 2 of the  
17 Settlement Agreement, the Court authorizes the payment of claims administration  
18 costs/fees and notice costs (related to the two classes involved in this matter only) from  
19 the Settlement Trust Fund to class counsel. Class counsel is also authorized to pay  
20 additional administration and arbitration costs out of the Settlement Trust Fund as they  
21 become due, as necessary. Class counsel shall document and submit those additional  
22 invoices and payments in connection with *cy pres* hearing scheduled in paragraph 10,  
23 *below*.

24           (4)     Upon the occurrence of the conditions set forth in Section 2 of the  
25 Settlement Agreement, the Court authorizes the payment of \$153,603.73 to the parents  
26 of the named plaintiff in this action, R.H., to reimburse them for their out-of-pocket

1 ABA costs as provided in Section 9 of the Settlement Agreement. Class counsel is  
2 authorized to disburse these funds from the Settlement Trust Fund.

3 (5) With respect to the work performed on behalf of the R.H Classes, the  
4 Court awards class counsel a fee of 35% of the common cash fund allocated to this  
5 action. No class member has objected to this amount, which is significant evidence that  
6 the class members find the request to be fair. As the combined population of the R.H.  
7 NDT Class and R.H. ABA Class is roughly equal to the combined size of the A.G. NDT  
8 Class and the J.P. ABA Class, half of the common fund is fairly allocated to this action,  
9 as the parties have done in the Settlement Agreement at Section 8.4.6.1. *See also* Dkt.  
10 No. 69-1, *Exh. A*, p. 5 and *Exh. B*, p. 5 (population data for ERISA and non-ERISA class  
11 members is roughly equal). As a result, for class counsel's work in just this case before  
12 this Court, it is awarded \$612,500. This amount is fair and reasonable given that class  
13 counsel obtained broad prospective relief and future benefits for both the R.H. Classes,  
14 which far exceeds the value of just the cash fund. Dkt. No. 74, ¶¶9-10 (Decl. of Frank  
15 Fox, Ph.D.); *Vizcaino v. Microsoft Corp.*, 142 F. Supp. 2d 1299, 1305 (W.D. Wa. 2001)  
16 (benchmark fee looks at the total recovery obtained, "including future benefits."). This  
17 award also results in a multiplier of 3.3, which is well within an acceptable range. *See*  
18 *Vizcaino v. Microsoft*, 290 F.3d 1043, 1051 (9th Cir. 2002) (multiplier of 3.65 "was within  
19 the range of multipliers applied in common fund cases"). Upon the occurrence of the  
20 conditions set forth in Section 2 of the Settlement Agreement, the Court awards these  
21 attorney fees to class counsel for its efforts in this action, and authorizes the  
22 disbursement of these funds from the Settlement Trust Fund to class counsel.

23 (6) Upon the occurrence of the conditions set forth in Section 2 of the  
24 Settlement Agreement, the Court awards litigation costs to class counsel in the amount  
25 of \$8,355.18, reflecting litigation costs to date in just this action. The Court authorizes  
26 the disbursement of these funds from the Settlement Trust Fund.

1 (7) Upon the occurrence of the conditions set forth in Section 2 of the  
2 Settlement Agreement, R.H., through his parents P.H. and N.B.-H., is awarded an  
3 incentive award in the sum of \$25,000. The Court authorizes the disbursement of these  
4 funds from the Settlement Trust Fund.

5 (8) Upon the occurrence of the conditions set forth in Section 2 of the  
6 Settlement Agreement, the Court authorizes the payment of approved class member  
7 claims in this action. The Court also authorizes the payment of the two late claims  
8 identified by class counsel which were received prior to December 21, 2014, provided  
9 they are otherwise approved by the claims administrator for payment. The Court  
10 authorizes the disbursement of these funds from the Settlement Trust Fund

11 (9) Individuals otherwise in the R.H. Classes who submitted opt-out forms,  
12 attached at *Exhibit B* to Declaration of Eleanor Hamburger in Support of Plaintiff's  
13 Unopposed Motion for Final Approval of Settlement Agreement (Dkt. No. 82), are  
14 excluded from the R.H. Classes, and are not subject to any provision of the Settlement  
15 Agreement.

16 (10) A hearing to consider the distribution of *cy pres* funds is scheduled for  
17 July 10, 2015 at 9:00 a.m.

18 It is so ORDERED this 21st day of January, 2015.

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22 The Honorable Richard A. Jones  
23 United States District Judge  
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